

IN THE NORTH GAUTENG HIGH COURT
(REPUBLIC OF SOUTH AFRICA)

THE WRITING OF THIS JUDGMENT IS NOT APPLICABLE	
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	
(3) REVISED.	
09.05.2010 DATE	<i>[Signature]</i> SIGNATURE

07/05/2010

Case No: 15429/08

In the matter between:

ANNIKA VAN HEERDEN

Plaintiff

vs

ROAD ACCIDENT FUND

Respondent

JUDGMENT**SAPIRE, A J:**

The Plaintiff, formerly a hairdresser, or hair stylist, as some prefer to be called, is suing the Defendant claiming damages for injuries sustained by her in a motor car accident. The matter is defended both on the merits and on the question of damages. I deal with these aspects in that order.

Merits:

Plaintiff testified that the accident in which she was injured occurred on the 19th of March 2004 at about 8h30. The Plaintiff was travelling from Johannesburg to Nelspruit on the N4 in a motor vehicle of which she was the driver. The prevailing weather conditions were clear and dry. The surface of the road was macadamised. The collision occurred west of Machadadorp. At the scene of the occurrence the road consisted of two lanes, one for traffic travelling in each direction. There was a yellow line sufficiently far from the edge of the road for a motor vehicle to travel therein. Veldt abutted the road on either side.

The Plaintiff recounted that the taxi had been driving behind her in close proximity to her for about thirty minutes. The Plaintiff recalls that the taxi followed less than a car's length behind her. Although the Plaintiff was not questioned at any length on this subject the estimate of a half an hour as the time that she was followed by the taxi seems to me an exaggeration. But little turns on this and is not a reason to reject her evidence as a whole.

The taxi was unable to pass as there was oncoming traffic. As she felt pressure from the vehicle behind her she moved over the yellow line to the side of the road but still on the tarred surface, in order to let the taxi pass. The next thing she knew was that the taxi collided with her vehicle, causing her to move first to her left and then she swung right taking her vehicle into the lane of oncoming traffic. She then corrected again moving to her left but lost control of the vehicle which rolled and landed on its

roof alongside the road. She recalls that the taxi after hitting her vehicle continued on its way without stopping.

When her vehicle came to rest she unbuckled her seat belt and she fell on her head. At that time she also saw her hand which had been crushed between the car and the earth, and remembers seeing her hand dangling on some skin.

A passerby assisted her and attempted to stop the bleeding and then took her to the Sappi Plant to be stabilised in its clinic. Thereafter she was taken to the hospital in Nelspruit where she was put on a drip and her arm was operated on at about 18h00. Only the bones in the forearm were adjusted and her arm was placed in a cast.

From the Nelspruit Hospital where she remained until Sunday she was taken to the Kloof Hospital where she underwent further procedures. These procedures included muscle being taken from her back and skin from her left leg to reconstruct her hand. After discharge from the hospital she went to a doctor for treatment on a weekly basis. She also received attention from a physiotherapist twice a week and an occupational therapist once a week.

Plaintiff suffered pain and could not use her right hand for a year and a half. She was not able to brush her teeth as before and could only use press studs as she could not handle a button. She experienced difficulty in tying her shoe laces. She has no feeling in her arm and cannot make a fist or hold objects properly. Her right upper limb is extensively scarred and does cause embarrassment.

She began her career as a hairdresser in 1991 as an apprentice. The work was a source of pride and satisfaction to her. She was eventually employed when qualified by Regis. At the time of the accident she was earning approximately R11 500,00 per month. This was not disputed. At the time of the accident Plaintiff worked at the Fourways Mall branch of Regis where she was a senior stylist. Her work consisted of cutting and styling, serving products and providing training in the art at other branches, once or twice a week.

After the collision Plaintiff recuperated at home for almost two years. She received part of her salary during this period but was never able to resume her duties after the collision and did not return to work. The reason that she could not continue as a hairdresser was and is that she cannot hold scissors nor can she manage the hand motions that the work requires. She made particular reference to the fact that she could not wash the customer's hair.

Because she could no longer function as a hairdresser she decided to study with the view to becoming a nail technician. She chose a channel which kept her in the beauty industry. Although she is able to do the work of a nail technician she tires quickly, works slowly, and is not able to carry out the work as a fully able body person would. She had suffered a loss of earnings since becoming a nail technician.

Plaintiff also described how she worked as a receptionist for some time. Her motivation for so doing was the higher salary. This occupation did not continue long as she could not fulfil her duties. Plaintiff described how she worked after resigning as a receptionist and detailed her monthly income at this time. She continues to work

as a nail technician basing herself at her home but also goes to client's houses. She has a few steady clients and although her business provided a poor income at present she hoped that the business would grow.

Plaintiff was cross examined at some length, on the issues which the defendant raised in its plea.

Defendant in the first place suggested that the accident was caused by the Plaintiff having lost control of her vehicle without any other vehicle being involved at all. In effect this would mean that the Plaintiff was fabricating a version to bring herself within the provisions of Section 17(1) (b) of the Act. In support of this theory Plaintiff was questioned as to why the description of the occurrence as recorded by the official who compiled the accident report makes no mention of another vehicle being involved. In the absence of evidence from the traffic officer as to how he came to compile his report her insistence that such an impact took place must be accepted. It does not seem that she should be called upon to explain the version recorded unless the official was called to testify that she had subscribed to the version recorded by him. Plaintiff has been consistent in her account of the accident to which she testified. Her evidence was given in an unexceptionable manner and stands uncontradicted.

She was also questioned about what steps she had taken to identify the owner/driver of the taxi. It is difficult to see what she could have done apart from having deposed to affidavits and having reported the occurrence to the Police. No steps were suggested which she could have taken.

A succeeding witness was the Plaintiff's attorney of record who explained that in order to identify the owner or driver of the taxi he had been in touch with an officer at the Waterval Boven Police Station prior to the lodgement of the Plaintiff's claim. The enquiries made were unfruitful in this regard.

This issue is not a maintainable objection to the acceptance of Plaintiff's claim. I find that as far as the merits are concerned the Plaintiff established her claim.

Amount of Damages

After the Plaintiff concluded her evidence a Mrs Dolinschek testified as an expert occupational therapist. She testified at some length as to the incapacitating effect of the injury received by the Plaintiff and it is clear from her evidence that hairdressing is not possible for the Plaintiff since the injury. Her evidence was also directed to what employment prospects are open to the Plaintiff. Her injury would prevent her from working as a typist or secretary and her injury made her unattractive to prospective employers in the open labour market. She considered that the Plaintiff's current occupation as a nail technician was well suited to her notwithstanding that she works at a slower pace than other technicians. No doubt the disfigurement to her right hand would also limit the number of clients who would choose her as their nail technician. Her testimony was largely unchallenged and was taken into account by the actuary who calculated the Plaintiff's damages.

The following witness was a Dr A Strydom, an industrial psychologist whose evidence and conclusions need not be minutely examined.

The effect of the evidence of these experts was that the injury sustained by the Plaintiff was serious and its effects permanent. Plaintiff's claim that she was disabled from pursuing her chosen career in the field of hair styling was justified. It is also clear that she is still capable of earning a salary in some alternative occupation. Her choice to become a nail technician and to service her own clients is not unreasonable. Possibly there are more lucrative avenues open to the plaintiff but this on the evidence remains pure conjecture.

Plaintiff's counsel submitted that Plaintiff's damages comprised,

Past hospital and medical expenses

These had been paid by workman's compensation commissioner NIL

Past loss of income

Agreed R472, 753

Future loss of income

On basis of actuary's calculation (1st scenario)

1,039,976

General Damages

250,000

for which he contended

The actuary's evidence as to method of calculation was accepted and he was not called to substantiate his calculations. The factual basis for such calculations is in the


nature of the exercise speculative and imprecise. The actuary's calculations envisaged three possible scenarios and with these in mind has come to what he considers a reasonable figure as an estimate of an amount for future loss of earning. Plaintiff's claim is based on the gloomier of the two most likely scenarios examined in argument.

I conclude that it would be fair and reasonable to award one million rand as compensation for loss of earning capacity, being an amount something between the two most likely scenarios.

The amount claimed for general damages is reasonable and requires no adjustment

There will be judgment for plaintiff as follows

- a) Payment of the amount of R 1 722 573.
- b) Defendant is to furnish an undertaking in terms of section 17(4) of the Act in respect of future medical expenses;
- c) Interest @ 10.5 % per annum on the award commencing 15 days after date hereof until date of payment
- d) Costs of the suit, to include the fees of the expert witnesses who testified as well as the actuaries who did not testify.


SAPIRE, A J

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